THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.27019 OF 2005

DATE: 1st September 2006

Between:
Mohd. Khalid Shareef, s/o Kohd. Ismail,
aged about 42 years, r/o H.No.8-2-592,
Road No.5, Jubilee Hills, Hyderabad.

… Petitioner.

And

1. The Jubilee Hills Co.operative
   House Building Society Ltd.,
   (TA 173), Road No.17-A, Jubilee
   Hills, Hyderabad-500 033,
   Rep. by its Member Secretary
   and 2 others.

… Respondents.

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ORDER:

This writ petition is filed seeking a writ of Mandamus declaring the proceedings dated 06.12.2005 issued by the first respondent to the second respondent, as arbitrary, illegal and unenforceable; and consequently to direct the respondent No.2 not to act upon the proceedings of the first respondent.

2. It appears that the petitioner is a member of the Jubilee Hills Co-operative House Building Society. He purchased plot No.22 on Road No.5 of the first respondent society admeasuring 1196 square yards under five registered sale deeds during August 1999 from Syed Masood Hyder Razvi, a member of the first respondent society with membership No.2956. In the year 1980 the said vendor i.e., Syed

Masood Hyder Razvi, purchased plot No.22 on Road No.5 from the first respondent society and constructed a building thereon with D.No.8-2-293/82 after obtaining necessary building permit from the Municipal Corporation of Hyderabad. The entire premises altogether 1196 square yards with building thereon on plot No.22 is surrounded by a compound wall constructed by the vendor of the petitioner in the year 1982. The petitioner having purchased the said premises under the aforesaid five registered sale deeds in August 1999 occupied the said premises. Therefore, the petitioner approached the first respondent society to effect transfer of the membership No.2956 of his vendor and the plot No.22 in his favour. After satisfying all the formalities, the said transfer of membership has been approved by the committee at its meeting held on 14.10.2005. The petitioner also received a copy of the letter from the first respondent society to the vendor under letter Ref.JCS/2005 dated 26.10.2005 stating that the transfer has been effected in the records of the society. Further, the first respondent society also issued a certificate dated 28.10.2005 showing that the petitioner is a member of the society with MS.No.2956 and is the owner of the plot No.22. Thereafter, on 13.12.2004 the petitioner applied to the Hyderabad Municipal Corporation for sanction of building permit as per the plans submitted by him for the ground and two upper floors. The said building permit has been granted on 05.2.2005. The petitioner applied to the second respondent bank on 18.4.2005 for a housing loan of Rs.106.00 lakhs. The said bank in its turn obtained legal opinion dated 07.5.2005 for the title clearance and also conducted an inspection of the property on 15.7.2005. Thereafter, the officials inspected and submitted a report on 08.11.2005. Further, the bank also obtained third party guarantees. The said loan was sanctioned and the same has been

approved by the zonal office of the State Bank of Hyderabad vide its letter dated 29.11.2005. The manager of the bank was supposed to release the funds sanctioned. However, the second respondent bank informed the petitioner through the impugned proceedings that the N.O.C. purported to have been issued by the society signed by the then Administrative Officer is not valid and the same is without authority and issued without following proper office procedure. Further, the member has encroached into society's land and the society is taking steps for demolition of illegal structures. In view of this the bank refused to release the funds. Therefore, he filed the present writ petition questioning the explanation of the N.O.C. issued by the society earlier.

3. Respondent No.2 filed a detailed counter denying the allegations and stated that mere approval of the loan by the zonal office of the State Bank of Hyderabad does not confer any right on the petitioner to claim for the loan amount. Further, letter dated 29.11.2005 is not a communication addressed to the writ petitioner and it is only an internal correspondence which does not confer any right on the petitioner. Similar letter dated 30.11.2005 addressed by the Assistant General Manager, to the Branch Manager, Masab Tank Branch, Hyderabad, was also not communicated to the petitioner. The said two letters are purely internal correspondence of the bank and the writ petitioner cannot claim any right whatsoever. In view of the fact that there are various instances of litigation with regard to properties in Jubilee Hills area, the bank has been insisting upon obtaining a no objection certificate from the Jubilee Hills Co-operative Society for release of loan amount. In the same process the writ petitioner was also asked to obtain no objection certificate from the first respondent

cooperative society. The petitioner produced an application on 10.1.2005 addressed to the society for issue of no objection letter, whereas he produced a letter dated 28.10.2005 signed by the Administrative Officer that the society has no objection for obtaining housing loan on mortgaging the property to the bank. The said letter refers to request made by the writ petitioner vide his letter dated 27.10.2005. Since, there is a discrepancy in the date of application by the writ petitioner to ensure that the letter dated 28.10.2005 is genuine, the bank addressed the letter directly to the first respondent requesting confirmation of the no objection. At that time the first respondent society issued the impugned letter.

4. Learned counsel for the petitioner strenuously contended that since a person in charge, as a government officer, represents first respondent, and the society is carrying on the statutory duties to the public, the writ petition under Article 226 read with Article 12 of the Constitution of India is maintainable. Under peculiar circumstances the society should be treated as a State within the meaning of Article 12 of the Constitution of India.

5. I am of the opinion that the writ petition is misconceived. The first respondent is a society and the impugned order passed by the said society is under challenge. The challenge is made to a letter issued by the first respondent society, which is not a State within the meaning of the Article 12 of Constitution of India; therefore, no writ petition can be maintained against the first respondent. No relief is sought against respondents 2 and 3. Therefore, the writ petition is not maintainable and is liable to be dismissed.

6. The writ petition is accordingly dismissed. However, this

will not preclude the petitioner from working out his remedies as available either under the A.P. Cooperative Societies Act or any other law for the time being in force. No costs.

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C.V.RAMULU, J.

Date: 01st September 2006.
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